

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
Case No. 7:14-CV-00157-D**

CTB, INC.,)
)
Plaintiff,)
)
v.)
)
HOG SLAT, INC.,)
)
Defendant.)

**PLAINTIFF’S MEMORANDUM IN SUPPORT OF
MOTION FOR DISALLOWANCE OF COSTS**

Plaintiff CTB, Inc. (“CTB”), pursuant to Local Rule 54.1(b) and by and through its undersigned counsel, hereby files this Memorandum of Law in Support of its Motion for Disallowance of Costs sought by Defendant Hog Slat, Inc. (“Hog Slat”) in Hog Slat’s Motion for Costs (D.E. 177). More specifically, CTB moves to disallow \$4,862.19 of the costs sought by Hog Slat (as well as any other costs the Court may determine to be inappropriate) as non-taxable and/or unsupported by the motion and supporting documents, and thus inappropriate under this Court’s Application for Costs Guidelines and related case law.

I. Legal Standard

Federal Rule of Civil Procedure 54 and Local Rule 54.1, as well as the guidance set forth in this Court’s *Application for Costs Guidelines* (hereinafter the “Guidelines”), govern the award of post-judgment costs to prevailing parties. As set forth in the Guidelines,

Only those costs specifically enumerated in 28 U.S.C. § 1920 are taxable. The clerk will deny all other requested costs, even if the opposing party has failed to file a motion for disallowance.

Prevailing parties are responsible for providing the required documentation to support their applications for costs, and must explain how the documents support each requested item. [*Id.* at p. 8.]

II. Hog Slat's Motion for Costs Should be Partially Denied.

CTB does not dispute that Hog Slat is the prevailing party and is entitled to allowable costs in accordance with the applicable rules. However, as set forth in more detail in the table below, \$4,862.19 of the costs sought by Hog Slat should be rejected for the following reasons:

Costs Sought	Basis for Denying Costs
\$106.49 for photocopies by Nova Office Strategies (9/1/2015)	The supporting documents lack sufficient identification and explanation of these costs, including why they would be recoverable. <i>See</i> Guidelines, p. 8 n.2 (explaining that the lack of supporting documentation “will result in a denial of any unexplained costs”).
\$80.00 of \$143.92 invoice for Deposition of Robert Cissel (10/13/2015)	\$80.00 of these costs are listed by Hog Slat as covering two days of testimony. However, the supporting documents do not include a line item identifying these costs. <i>See</i> Guidelines, p. 8 n.2 (explaining that the lack of supporting documentation “will result in a denial of any unexplained costs”).
\$121.25 for search fees by MicroPatent – Thomson File Histories (10/14/2015)	The supporting documents lack sufficient identification and explanation of these costs, including why they would be recoverable. <i>See</i> Guidelines, p. 8 n.2 (explaining that the lack of supporting documentation “will result in a denial of any unexplained costs”).
\$40.00 for Deposition of Carmen Parkhurst (11/4/2015)	The supporting documents do not include a line item identifying these costs. <i>See</i> Guidelines, p. 8 n.2 (explaining that the lack of supporting documentation “will result in a denial of any unexplained costs”).
\$101.02 of \$256.00 invoice from Jensen Litigation Services (11/5/2015)	<p>\$101.02 of \$256.00 invoice is for a rough transcript (\$97.00) and exhibits (\$3.50).</p> <p>Costs of daily or expedited copy produced solely for the convenience of counsel, absent prior court approval, are not taxable. <i>See</i> Local Rule 54.1(c)(2)(C); <i>see also Fulmore v. United Parcel Service</i>, 7:11-CV-18-F, 2013 WL 5969715, at *1 (E.D.N.C. Nov. 18, 2013) (disallowing costs for expedited transcript).</p> <p>Copies of deposition exhibits obtained at depositions are not taxable. <i>See Dutton v. Wal-Mart Stores East, L.P.</i>, No. 4:11-CV-94-BO, 2015 WL 1643025, at *2 (E.D.N.C. March 13, 2015) (“In construing 28 U.S.C. §1920 and Local Civil Rule 54.1, this court has also denied fees for copies of deposition exhibits, read and sign, rough drafts, litigation support</p>

	packages, ASCII disks, shipping, handling and expedited processing.”).
\$225.00 for court reporter for Huseby, Inc. (11/17/2015)	The Guidelines do not provide for the recovery of cancellation fees, and Hog Slat provides no explanation as to why this would be recoverable.
\$8.00 of \$330.50 invoice from Jensen Litigation Services (11/18/2015)	<p>\$8.00 of this invoice is for exhibits.</p> <p>Copies of deposition exhibits obtained at depositions are not taxable. <i>See Dutton v. Wal-Mart Stores East, L.P.</i>, No. 4:11-CV-94-BO, 2015 WL 1643025, at *2 (E.D.N.C. March 13, 2015) (“In construing 28 U.S.C. §1920 and Local Civil Rule 54.1, this court has also denied fees for copies of deposition exhibits, read and sign, rough drafts, litigation support packages, ASCII disks, shipping, handling and expedited processing.”).</p>
\$469.80 of \$1,026.55 invoice from Garrett Reporting Services, Inc. (11/18/2015)	<p>\$469.80 of this invoice is for: Rough Draft (\$355.50), Compressed Transcript (\$35.65), Keyword Index (\$9.00), Exhibits scanned (\$37.00), E-Transcript (\$25.00), and Postage and Handling (\$7.65). These costs should be denied because the following costs are not taxable as set forth in pp. 11-12 of the Guidelines:</p> <ul style="list-style-type: none"> a. Costs of daily or expedited copy produced solely for the convenience of counsel, absent prior court approval. <i>See</i> Local Civil Rule 54.1(c)(2)(C); <i>see also Fulmore v. United Parcel Service</i>, 7:11-CV-18-F, 2013 WL 5969715, at *1 (E.D.N.C. Nov. 18, 2013) (disallowing costs for expedited transcript). e. Court reporter postage, shipping/handling, or delivery charges for a transcript. f. Copies of deposition exhibits obtained at depositions. <i>See Dutton v. Wal-Mart Stores East, L.P.</i>, No. 4:11-CV-94-BO, 2015 WL 1643025, at *2 (E.D.N.C. March 13, 2015) (“In construing 28 U.S.C. §1920 and Local Civil Rule 54.1, this court has also denied fees for copies of deposition exhibits, read and sign, rough drafts, litigation support packages, ASCII disks, shipping, handling and expedited processing.”).
\$48.00 of \$290.64 invoice from Jensen Litigation Services (11/20/2015)	<p>\$48.00 of this invoice is for exhibits.</p> <p>Copies of deposition exhibits obtained at depositions are not taxable. <i>See Dutton v. Wal-Mart Stores East, L.P.</i>, No. 4:11-CV-94-BO, 2015 WL 1643025, at *2 (E.D.N.C. March 13, 2015) (“In construing 28 U.S.C. §1920 and Local Civil Rule 54.1, this court has also denied fees for copies of deposition exhibits, read and sign, rough drafts, litigation support packages, ASCII disks, shipping, handling and expedited processing.”).</p>
\$805.12 of \$1,349.75 invoice from Elite Realtime	\$805.12 of this invoice is for an extra transcript copy (\$394.62), Rough Draft (\$307.50), Scanning Exhibits (\$73.00), Electronic Transcript (\$10.00), and Shipping and Handling (\$20.00). These costs should be

<p>& Deposition Reporting (12/1/2015)</p>	<p>denied because the following costs are not taxable as set forth in pp. 11-12 of the Guidelines:</p> <ul style="list-style-type: none"> a. Costs of daily or expedited copy produced solely for the convenience of counsel, absent prior court approval. <i>See</i> Local Civil Rule 54.1(c)(2)(C); <i>see also Fulmore v. United Parcel Service</i>, 7:11-CV-18-F, 2013 WL 5969715, at *1 (E.D.N.C. Nov. 18, 2013) (disallowing costs for expedited transcript). e. Court reporter postage, shipping/handling, or delivery charges for a transcript. f. Copies of deposition exhibits obtained at depositions. <i>See Dutton v. Wal-Mart Stores East, L.P.</i>, No. 4:11-CV-94-BO, 2015 WL 1643025, at *2 (E.D.N.C. March 13, 2015) (“In construing 28 U.S.C. §1920 and Local Civil Rule 54.1, this court has also denied fees for copies of deposition exhibits, read and sign, rough drafts, litigation support packages, ASCII disks, shipping, handling and expedited processing.”).
<p>\$1,207.35 of \$1,938.70 invoice from Elite Realtime & Deposition Reporting (12/1/2015)</p>	<p>\$1,207.35 of this invoice is for an extra transcript copy (\$581.35), Rough Draft (\$453.00), Scanning Exhibits (\$143.00), Electronic Transcript (\$10.00), and Shipping and Handling (\$20.00). These costs should be denied because the following costs are not taxable as set forth in pp. 11-12 of the Guidelines:</p> <ul style="list-style-type: none"> a. Costs of daily or expedited copy produced solely for the convenience of counsel, absent prior court approval. <i>See</i> Local Civil Rule 54.1(c)(2)(C); <i>see also Fulmore v. United Parcel Service</i>, 7:11-CV-18-F, 2013 WL 5969715, at *1 (E.D.N.C. Nov. 18, 2013) (disallowing costs for expedited transcript). e. Court reporter postage, shipping/handling, or delivery charges for a transcript. f. Copies of deposition exhibits obtained at depositions. <i>See Dutton v. Wal-Mart Stores East, L.P.</i>, No. 4:11-CV-94-BO, 2015 WL 1643025, at *2 (E.D.N.C. March 13, 2015) (“In construing 28 U.S.C. §1920 and Local Civil Rule 54.1, this court has also denied fees for copies of deposition exhibits, read and sign, rough drafts, litigation support packages, ASCII disks, shipping, handling and expedited processing.”).
<p>\$611.15 of \$1,065.30 invoice from Elite Realtime & Deposition Reporting (12/1/2015)</p>	<p>\$611.15 of this invoice is for an extra transcript copy (\$304.15), Rough Draft (\$237.00), Scanning Exhibits (\$40.00), Electronic Transcript (\$10.00), and Shipping and Handling (\$20.00). These costs should be denied because the following costs are not taxable as set forth in pp. 11-12 of the Guidelines:</p> <ul style="list-style-type: none"> a. Costs of daily or expedited copy produced solely for the convenience of counsel, absent prior court approval. <i>See</i> Local

	<p>Civil Rule 54.1(c)(2)(C); <i>see also Fulmore v. United Parcel Service</i>, 7:11-CV-18-F, 2013 WL 5969715, at *1 (E.D.N.C. Nov. 18, 2013) (disallowing costs for expedited transcript).</p> <p>e. Court reporter postage, shipping/handling, or delivery charges for a transcript.</p> <p>f. Copies of deposition exhibits obtained at depositions. <i>See Dutton v. Wal-Mart Stores East, L.P.</i>, No. 4:11-CV-94-BO, 2015 WL 1643025, at *2 (E.D.N.C. March 13, 2015) (“In construing 28 U.S.C. §1920 and Local Civil Rule 54.1, this court has also denied fees for copies of deposition exhibits, read and sign, rough drafts, litigation support packages, ASCII disks, shipping, handling and expedited processing.”).</p>
\$130.00 of \$4969.40 invoice from Planet Depos, LLC (1/21/2016)	<p>\$130.00 of this invoice is for Exhibits (\$35.00) and a LEF File (\$95.00). These costs should be denied because the following costs are not taxable as set forth in pp. 11-12 of the Guidelines:</p> <p>b. ASCII diskettes for copies of deposition transcripts. <i>See Boykin Anchor Co., Inc. v. AT&T Corp.</i>, No. 5:10-CV-591-FL, 2014 WL 4798726, at *2 (E.D.N.C. Sept. 26, 2014) (disallowing costs for ASCII diskettes).</p> <p>f. Copies of deposition exhibits obtained at depositions. <i>See Dutton v. Wal-Mart Stores East, L.P.</i>, No. 4:11-CV-94-BO, 2015 WL 1643025, at *2 (E.D.N.C. March 13, 2015) (“In construing 28 U.S.C. §1920 and Local Civil Rule 54.1, this court has also denied fees for copies of deposition exhibits, read and sign, rough drafts, litigation support packages, ASCII disks, shipping, handling and expedited processing.”).</p>
\$127.90 of \$573.15 invoice from Planet Depos, LLC (2/3/2016)	<p>\$127.90 of this invoice is for Exhibits (\$32.90) and a LEF File (\$95.00). These costs should be denied because the following costs are not taxable as set forth in pp. 11-12 of the Guidelines:</p> <p>b. ASCII diskettes for copies of deposition transcripts. <i>See Boykin Anchor Co., Inc. v. AT&T Corp.</i>, No. 5:10-CV-591-FL, 2014 WL 4798726, at *2 (E.D.N.C. Sept. 26, 2014) (disallowing costs for ASCII diskettes).</p> <p>f. Copies of deposition exhibits obtained at depositions. <i>See Dutton v. Wal-Mart Stores East, L.P.</i>, No. 4:11-CV-94-BO, 2015 WL 1643025, at *2 (E.D.N.C. March 13, 2015) (“In construing 28 U.S.C. §1920 and Local Civil Rule 54.1, this court has also denied fees for copies of deposition exhibits, read and sign, rough drafts, litigation support packages, ASCII disks, shipping, handling and expedited processing.”).</p>

\$152.40 of \$730.90 invoice from Planet Depos, LLC (2/3/2016)	<p>\$152.40 of this invoice is for Exhibits (\$57.40) and a LEF File (\$95.00). These costs should be denied because the following costs are not taxable as set forth in pp. 11-12 of the Guidelines:</p> <ul style="list-style-type: none"> b. ASCII diskettes for copies of deposition transcripts. <i>See Boykin Anchor Co., Inc. v. AT&T Corp.</i>, No. 5:10-CV-591-FL, 2014 WL 4798726, at *2 (E.D.N.C. Sept. 26, 2014) (disallowing costs for ASCII diskettes). f. Copies of deposition exhibits obtained at depositions. <i>See Dutton v. Wal-Mart Stores East, L.P.</i>, No. 4:11-CV-94-BO, 2015 WL 1643025, at *2 (E.D.N.C. March 13, 2015) (“In construing 28 U.S.C. §1920 and Local Civil Rule 54.1, this court has also denied fees for copies of deposition exhibits, read and sign, rough drafts, litigation support packages, ASCII disks, shipping, handling and expedited processing.”).
\$103.60 for eScribers, LLC (4/18/2016)	It is unclear what these costs represent. They are listed as a “Filing Fee 4/11/2016 Vendor”, but the invoice indicates it is for “Transcription.” There is no further explanation. Absent additional information, these costs should be denied. <i>See</i> Guidelines, p. 8 n.2 (explaining that the lack of supporting documentation “will result in a denial of any unexplained costs”).
\$362.00 for eScribers, LLC (4/18/2016)	It is unclear what these costs represent. They are listed by Hog Slat as a “Filing Fee 4/7/2016 Vendor”, but the invoice indicates it is for “Transcription.” There is no further explanation. Absent additional information, these costs should be denied. <i>See</i> Guidelines, p. 8 n.2 (explaining that the lack of supporting documentation “will result in a denial of any unexplained costs”).
\$16.91 for Discover-e LLC, DBA Novitas Data (1/19/2017)	It is unclear what these costs represent. They are listed by Hog Slat as “Vendor-Photocopies”, but the invoice indicates it is for “Unitization (per page).” There is no further explanation. Absent additional information, these costs should be denied. <i>See</i> Guidelines, p. 8 n.2 (explaining that the lack of supporting documentation “will result in a denial of any unexplained costs”).
\$30.60 for Margaret Kruse (1/19/2017)	These costs appear to be related to obtaining a transcript from the U.S. District Court for the Eastern District of Arkansas. The supporting documents lack sufficient identification and explanation of these costs, including why they would be recoverable. <i>See</i> Guidelines, p. 8 n.2 (explaining that the lack of supporting documentation “will result in a denial of any unexplained costs”).
\$53.63 for Capital Discovery LLC	These costs appear to be for blowbacks from images and velo binding. The supporting documents lack sufficient identification and explanation of these costs, including why they would be recoverable. <i>See</i> Guidelines, p. 8

(10/29/2018)	n.2 (explaining that the lack of supporting documentation “will result in a denial of any unexplained costs”).
\$61.97 for Capital Discovery LLC (9/30/2019)	These costs appear to be for blowbacks from images and velo binding. The supporting documents lack sufficient identification and explanation of these costs, including why they would be recoverable. <i>See</i> Guidelines, p. 8 n.2 (explaining that the lack of supporting documentation “will result in a denial of any unexplained costs”).

Therefore, in total, \$4,862.19 of the costs sought by Hog Slat should be denied, along with any further costs sought by Hog Slat that the Court determines to be inappropriate.

III. Conclusion

For the foregoing reasons, CTB respectfully requests that the Court grant its Motion for Disallowance of Costs and deny \$4,862.19 of the costs sought by Hog Slat, as well as any further costs sought by Hog Slat that the Court determines to be inappropriate.

Dated: April 29, 2020

Respectfully submitted,

CLARK HILL PLC

/s/ Christopher B. Clare

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CERTIFICATE OF SERVICE

I certify that, on April 29, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system that will automatically serve all counsel of record.

Dated: April 29, 2020

CLARK HILL PLC

s/ Christopher B. Clare

Christopher B. Clare